

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JILL ALTMAN, individually and on behalf))	
of a class,)	
)	
Plaintiff,)	Civil Action No.:
)	1:15-cv-02451-SCJ-CMS
vs.)	
)	
WHITE HOUSE BLACK MARKET,)	
INC., and DOES 1-10,)	
)	
Defendants.)	

**DEFENDANT WHITE HOUSE BLACK MARKET, INC.'S
SECOND NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendant, White House Black Market, Inc. (“WHBM”), files this Second Notice of Supplemental Authority to notify the Court of the September 26, 2016 order from United States District Court for the Southern District of Florida in *Zia v. CitiMortgage, Inc. et al*, __ F. Supp. 3d __, Case No. 1:15-cv-23026-DPG (S.D. Fla. Sept. 26, 2016) (copy attached), which granted the defendant’s motion to dismiss a class action complaint that alleged only statutory violations and sought only statutory damages, on the basis that the allegations failed to establish a “concrete” injury as required by *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016).

In *Zia*, the plaintiff alleged that the defendant did not timely file satisfaction-of-mortgage documents as required by New York statutes. *Zia*, Slip Op. at 2.

Applying *Spokeo* and several post-*Spokeo* cases addressing standing, the court held that the alleged failure timely to file the satisfaction-of-mortgage documents did not rise to the level of a concrete injury as required by *Spokeo* and did not have any “concrete consequence.” *Id.* at 10. The court relied in part on the recent case of *Braitberg v. Charter Communications, Inc.*, __ F.3d __, 2016 WL 4698283 (8th Cir. Sept. 8, 2016), recently submitted as supplemental authority by WHBM in this case (Doc. 35), in which the Eighth Circuit held that a cable company’s retention of personal information of a former customer amounted to nothing more than a “bare procedural violation, divorced from any concrete harm” and that the plaintiff had identified “no material risk of harm from the retention.” *Id.* at 7 (citing *Braitberg*, 2016 WL 4698283, *4).

The court also relied on *Hancock v. Urban Outfitters, Inc.*, __ F.3d __, 2016 WL 3996710 (D.C. Cir. July 26, 2016), another case cited by WHBM in its motion for interlocutory appeal (Doc. 30-1 at 14-15). The *Zia* court held that the legislature “cannot erase Article III’s standing requirements by statutorily granting the right to sue a plaintiff who would not otherwise have standing under Article III.” *Id.* at 9 (citing *Hancock*, 2016 WL 3996710, *3). Meanwhile, the *Zia* court rejected the plaintiff’s reliance on the Eleventh Circuit’s “unpublished, post-*Spokeo*” opinion in *Church v. Accretive Health, Inc.*, __ Fed. Appx. __, 2016 WL

3611543 (11th Cir. July 6, 2016) (per curiam), on the basis that it represented a so-called “informational standing” case. *Id.* at 11.

In this case, as in *Zia*, *Braitberg*, and *Hancock*, Plaintiff has alleged, at most, a bare procedural violation, divorced from any concrete harm. *Zia*, a case from within this Circuit, demonstrates that the pure issue of law here – the standing, post-*Spokeo*, of Plaintiff to sue for mere statutory violations with no concrete harm alleged – continues to produce conflicting rulings within the courts, thus warranting the grant of WHBM’s motion for interlocutory appeal.

Dated: September 27, 2016.

Respectfully submitted,

KING & SPALDING LLP

/s/ Barry Goheen

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*Attorneys for Defendant White House Black
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CERTIFICATE OF COMPLIANCE

The undersigned certifies that 14-point Times New Roman was used for this document and that it has been formatted in compliance with Local Rule 5.1.

DATED: September 27, 2016.

/s/ Barry Goheen

Barry Goheen

CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the foregoing Notice of Supplemental Authority with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

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DATED: September 27, 2016.

/s/ Barry Goheen

Barry Goheen